\

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 120 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

BHAVNAGR ELECTRICITY CO. LTD.

Appearance:

1. INCOME TAX REFERENCE No. 120 of 1987

MR MANISH R BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal, has referred the following two questions for the opinion of this Court:

1 "Whether, the Appellate Tribunal is right in law and on facts in holding that on capital contribution there was no sale and hence provisions of section 41(2) of the I.T.Act,1961, were not applicable ?

2 Whether, the Appellate Tribunal is right in law and on facts in holding that provisions of Section 41(2) of the I.T.Act, were not applicable and hence no addition can be made ?"

2 The assessment year is 1979-80 and the relevant accounting period is financial year 1978-79. The assessee is a limited company which was engaged in the business of generation and distribution of electric supply. On 3.10.1978 its licence to generate and distribute electricity expired and consequently its business was taken over by the Gujarat Electricity Board. At the time of such take over the G.E.B. took over only some of the assets of the assessee company while remaining plant and machinery remained with the company.

3 As the assessee company thereafter decided to commence business of buying and selling machineries/ appropriate entries converting such machineries into stock in trade were made in its books and at this point of time revaluation was done showing the value of the machinery at Rs.1,12,55,120/-. Business of buying and selling machineries was commenced on 1/12/1978. On 12/12/1978 machineries to the extent of Rs.68,407/- were sold. On 28/12/1978 the assessee company entered into a partnership with one Shri R.T.Karanjawala whose share in profits/losses was 10%. The assessee company by way of its capital contribution contributed plant and machinery which was stock in trade of its marketing division at the value of Rs.1,12,55,120/-. The Income Tax Officer invoked provisions of section 41(2) of the Act and after deducting written down value of the machineries brought the surplus of Rs.1,07,98,932/- to tax as income of the assessment year in question. The C.I.T.(Appeal) confirmed the decision of the Income Tax Officer.

4 The assessee succeeded in Second Appeal before

the Tribunal. According to the Tribunal, the provision of Section 41(2) of the Act could be applied provided the assets were sold, discarded, demolished or destroyed. That the assessee's case did not fall within any of the four categories and hence, Section 41(2) was not attracted. It is against this order of the Tribunal that the revenue is in reference before us.

5 We have heard Mr.M.R.Bhatt for the applicant-revenue. Though served, none appears for the respondent.

6 We find no infirmity in the order of the Tribunal. During the year under consideration no taxable event has taken place. At the first stage, the assessee company revalued its business assets and converted the same into stock in trade. The said transaction did not amount to any transfer within the meaning of Section 2(47) of the Act, as the provision stood for the year under consideration. Similarly, at the stage when the assessee company contributed the stock-in-trade as capital in the partnership firm, though it would amount to transfer as held by the Supreme Court in the case of Kartikey Sarabhai, 156 ITR 509, as it was not possible to ascertain the consideration for such transfer, the same could not be brought to tax. The assessee company would be liable to pay tax on the share of its income as and when the partnership firm would trade in the said machineries. However, the said event having not taken place during the year under consideration there is no question of bringing any amount to tax. Furthermore, the Tribunal has correctly come to the conclusion that as none of the events prescribed in Section 41(2) have taken place the said section is not attracted.

6 We therefore, answer both the questions referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

7 The reference stands disposed of accordingly with no order as to costs.

(M.S.Shah, J) (D.A.Mehta,J)

m.m.bhatt